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March 12, 2014

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554
Attn: CGB Room 3-B431
via hand delivery

Re: Opposition to Four Petitions for Exemption from the Commission's Closed Captioning Rules, CG Docket No. 06-181

River of Life Christian Center, Case No. CGB-CC-0493
SJTV LLC dba CNY's Open House, Case No. CGB-CC-1226
Peace is Possible, NC, Inc., Case No. CGB-CC-1295
Outdoorsmen Productions, Case No. CGB-CC-0639

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Cerebral Palsy and Deaf Organization (CPADO), and California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), collectively, "Consumer Groups," respectfully oppose the above-

*Admitted to the California bar only.

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referenced petitions to exempt their programming from the Commission's closed requirements. All four petitions were put on notice on Feb. 10, 2014.[1] We oppose the grant of these exemptions because the Petitioners fail to show that providing captioning would be economically burdensome.

Consumer Groups stress that all four Petitioners have had multiple opportunities to submit the necessary information required under the economically burdensome standard, and some have had the better part of a decade to acquire funding to caption their programming. And while the Petitioners' requests have been pending, they have not had to provide closed captioning. Failure to act promptly would continue to deny access to these programs for individuals who are deaf or hard of hearing. Prompt action on these requests would also provide useful guidance to future petitioners seeking exemptions from the Commission's closed captioning rules.

I. Background

River of Life and Outdoorsmen have not captioned their programming since first submitting their waiver requests more than seven years ago. River of Life first submitted a petition for exemption from the Commission's closed-captioning rules in 2006.[2] Later that year, the Consumer and Government Affairs Bureau ("CGB") granted River of Life's petition under the 2006 Anglers Order, but then revoked that waiver

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[1] *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (Feb. 10, 2014).

[2] *See River of Life's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0493, Dkt. 06-181 (Mar. 2, 2006).

following the 2011 reversal of Anglers.[3] River of Life resubmitted its petition in 2012, but was asked for additional information from the CGB.[4] River of Life responded but again the CGB requested more information.[5] Again River of Life responded and for yet a third time the CGB requested additional information.[6] Following its most recent supplement, River of Life's petition was finally placed on public notice on Feb. 10, 2014.[7]

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[3] *See Anglers for Christ Ministries, Inc,, New Beginnings Ministries, Video Programming Accessibility, Petitions for Exemption for Closed Captioning Requirements*, CBG-CC-0005 and CBG-CC-0007, Memorandum Opinion and Order, 21 FCC Rcd 10094; 47 C.F.R. § 79.1(b)(iv). *See Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC Rcd 14941, 14945 (Oct. 20, 2011) (*"Anglers 2011"*); *Letter from Consumer and Governmental Affairs Bureau to River of Life*, Case No. CGB-CC-0493, Dkt. 06-181 (Oct. 25, 2011).

[4] *See River of Life's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0493, Dkt. 06-181 (Jan. 10, 2012); *Letter from Consumer and Governmental Affairs Bureau to River of Life*, Case No. CGB-CC-0493, Dkt. 06-181 (Apr. 18, 2012).

[5] *See River of Life's Supplment to Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0493, Dkt. 06-181 (May. 10, 2012); *Letter from Consumer and Governmental Affairs Bureau to River of Life*, Case No. CGB-CC-0493, Dkt. 06-181 (Aug. 8, 2012).

[6] *See River of Life's Supplement to Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0493, Dkt. 06-181 (Aug. 28, 2012); *Letter from Consumer and Governmental Affairs Bureau to River of Life*, Case No. CGB-CC-0493, Dkt. 06-181 (Sept. 26, 2013).

[7] *See River of Life's Supplement to Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0493, Dkt. 06-181 (Oct. 24, 2013) (*"River of Life Supplement"*); *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (Feb. 10, 2014).

Outdoorsmen's petition has been pending since it first requested a waiver in 2006.[8] Consumer Groups opposed Outdoorsmen's petition in 2007 because Petitioner provide insufficient information to support a waiver, but the Commission took no action on the matter until asking Outdoorsmen to renew its petition in 2012.[9] Outdoorsmen renewed its petition, but CGB asked it for more information later that year.[10] Outdoorsmen then supplemented its petition and the Commission placed its request on public notice for a second time.[11] Consumer Groups again opposed the petition in October of 2012 for the same reasons it previously opposed the waiver.[12] The CGB again requested additional information nearly a year later, which Outdoorsmen responded to in October 2013.[13] The Commission placed Outdoorsmen's petition on public notice for a third time in February.

SJTV and Peace is Possible filed their waiver petitions more recently, but were also given multiple opportunities to provide adequate information to demonstrate that they

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[8] *See Outdoorsmen's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0639, Dkt. 06-181 (Dec. 28, 2006).

[9] *See Consumer Groups Opposition to Outdoorsmen's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0639, Dkt. 06-181 (Feb. 23, 2007); *Letter from Consumer and Governmental Affairs Bureau to Outdoorsmen*, Case No. CGB-CC-0639, Dkt. 06-181 (Apr. 5, 2012).

[10] *See Outdoorsmen's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0639, Dkt. 06-181 (Apr. 16, 2012); *Letter from Consumer and Governmental Affairs Bureau to Outdoorsmen*, Case No. CGB-CC-0639, Dkt. 06-181 (July 18, 2012).

[11] *See Outdoorsmen's Supplement to Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0639, Dkt. 06-181 (Aug. 7, 2012);

[12] *Consumer Groups Opposition to Outdoorsmen's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0639, Dkt. 06-181 (Oct. 9, 2012).

[13] *Letter from Consumer and Governmental Affairs Bureau to Outdoorsmen*, Case No. CGB-CC-0639, Dkt. 06-181 (Sept. 26, 2013); *See Outdoorsmen's Supplement to Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-0639, Dkt. 06-181 (Oct. 7, 2013) ("*Outdoorsen Supplement*").

meet the economically burdensome standard. SJTV first petitioned for exemption in 2012.[14] Similar to other petitioners, SJTV received and responded to multiple requests for additional information from the CGB.[15] Consumer Groups also opposed SJTV's petition in 2012 based on SJTV's failure to demonstrate that it could not afford captioning or that it exhausted alternative means of funding captions.[16] Finally, Peace is Possible first filed a petition for exemption in 2013.[17] The CGB requested additional information from the organization in October of that year, and Peace is Possible responded later than month.[18] Both petitions were placed on public notice in February.

II. Legal Standard

Under 47 CFR §79.1(f), a video programming provider, producer or owner may petition for a full or partial exemption of closed captioning. The Commission may only grant an exception if the petitioner provides "sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be

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[14] *See SJTV's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-1226, Dkt. 06-181 (Mar. 28, 2012).

[15] *See Letter from Consumer and Governmental Affairs Bureau to SJTV*, Case No. CGB-CC-1226, Dkt. 06-181 (June 27, 2012); *SJTV's Supplement to Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-1226, Dkt. 06-181 (July 25, 2012); *Letter from Consumer and Governmental Affairs Bureau to SJTV*, Case No. CGB-CC-1226, Dkt. 06-181 (Sept. 26, 2013); *SJTV's Supplement to Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-1226, Dkt. 06-181 (Oct. 28, 2013) ("*SJTV Supplement*").

[16] *See Consumer Groups Opposition to SJTV's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-1226, Dkt. 06-181 (Oct. 9, 2012).

[17] *See Peace is Possible's Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-1295, Dkt. 06-181 (Mar. 26, 2013).

[18] *See Letter from Consumer and Governmental Affairs Bureau to Peace is Possible*, Case No. CGB-CC-1295, Dkt. 06-181 (Oct. 1, 2013); *Peace is Possible's Supplement to Petition for Exemption from the FCC's Closed Captioning Rules*, Case No. CGB-CC-1295, Dkt. 06-181 (Mar. 26, 2013) ("*Peace is Possible Supplement*").

economically burdensome. The term 'economically burdensome' means significant difficulty or expense." Beyond looking into whether an organization can plainly afford captioning, the FCC requires petitioners to show that they've bargained for captioning and explored alternatives to paying for captions.[19] And even when an applicant makes the requisite showing, the Commission only issues waivers for a limited time so that petitioners can identify resources to caption its programming and comply with the law.[20]

III. These Four Petitioners Fail to Meet the Economically Burdensome Standard.

The petitions of River of Life, SJTV, Peace is Possible, and Outdoorsmen should be denied because, after multiple opportunities to demonstrate that captioning would be economically burdensome, they have failed to provide the necessary evidence to satisfy the high standard required for an exemption. The Commission has said that, "[f]ailure to support an exemption request with adequate explanation and evidence to make these showings will result in dismissal of the request."[21] Thus because these petitioners have repeatedly failed to provide the necessary information, their petitions should be denied at this time.

Furthermore, even based on the information provided, Petitioners should be able to afford captioning at this time. Financial records show that Petitioners are financially healthy, and that they should therefore be able to afford to caption their programming

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[19] *Anglers 2011*, 26 FCC Rcd at 14955-56, ¶ 28 (footnotes omitted).
[20] *Anglers 2011*, 26 FCC Rcd at 14953 ("an exemption from the closed captioning obligations is not designed to perpetually relieve a petitioner of its captioning obligation") (internal quotations omitted).
[21] *Id.* at 14956, ¶ 28.

just as they would every other business expense. Petitioners therefore fail to meet the standard to receive a captioning waiver.

A. River of Life fails to meet the standard for a waiver.

River of Life states that captioning *Chose Generation* would cost $72,800 annually at $175 per episode and state an additional cost of $75,000 - $95,000 to upgrade their equipment.[22] These figures are problematic for two reasons. First, the price quoted by River of Life is much higher than the quotes given to River of Faith by captioning providers. For example, one captioning provider offered to provide live captioning at $60 per episode or taped encoding for between $95 and $120 per episode.[23] Yet another closed captioning provider offers a rate of $75 per hour of captioning if an edited script is provided.[24] These costs are much lower than the $175 used by River of Life; nor does River of Life explain why it cannot take advantage of these significantly lower rates. Second, River of Life never explains why it would cost $75,000 - $95,000 to upgrade its equipment o caption programming and fails to support these cost estimates. Thus River of Faith fails to provide adequate evidence or explanation to justify its stated costs.

River of Life also fails to show that it bargained for a more competitive captioning rate as required under the economically burdensome standard. A petitioner must show that it has at least tried to negotiate for lower rates before asserting

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[22] *River of Life Supplement* at 1.
[23] *Id.*, Dynamic Captioning, LLC Quote.
[24] *Id.*, "Post Production Closed Captioning Costs."

captioning costs.[25] Nowhere in the petition does River of Life provide evidence that it followed up with any of the captioning providers to request a lower rate. Furthermore, River of Life failed to pursue other bargaining options, such as requesting a nonprofit rate, special rates for long-term service, or lower rates for a later broadcast of the program.

Likewise, River of Life fails to demonstrate that it exhausted all alternatives to pay for closed captioning prior to obtaining a waiver as required by the Commission before obtaining a waiver.[26] River of Life states that it has contacted its programming distributor and that it appealed to its members for general financial assistance.[27] But it offers no support for its claim that their programming distributor does not offer funding services for closed captioning, nor does it document any targeted attempt to pursue sponsors specifically for closed captioning.[28]

Finally, with an annual budget of roughly $1.3 million, River of Life should be able to afford the cost of captioning just as it would any other business expense.[29] Just like turning on the lights or paying employees, providing closed captioning should be factored into a programming provider's budget just like any other cost of doing business. While Consumer Groups sympathize with River of Life's financial difficulties

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[25] *Compare, e.g.*, *Outland Sports, Inc.*, Case No. CSR 5443, 16 FCC Rcd 13,605, 13,607, ¶ 7 (CSB 2001) (approving of a petitioner's inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) *with The Wild Outdoors*, 16 FCC Rcd at 13613-14, ¶ 7 (disapproving of a petitionner's bald assertion of the cost to caption a program without supporting evidence).

[26] *Anglers 2011*, 26 FCC Rcd 14941, 14956.

[27] *River of Life Supplement* at 1.

[28] *Id.*

[29] *Id.*, Profit & Loss statement for 2012.

in 2012, the organization showed a substantial profit in 2011 and appears to generally be in good financial standing.[30] Furthermore, River of Life's $81,383 surplus in 2011 would have easily covered its captioning costs at that time. Thus River of Life fails to meet the heavy burden of showing that they cannot afford to provide closed captioning.

B. SJTV fails to meet the standard for a waiver.

Much like River of Life, SJTV has failed to adequately support its stated captioning costs as required by the Commission. SJTV states that based on the quotes it received, it would incur a cost of $175 to $300 per episode for a 24-hour turnaround.[31] However, one captioning provider states that it provide captioning for $150 per episode if there was a 3-day turnaround.[32] Although SJTV states that a 24-hour turnaround is the "only viable option" for its production schedule,[33] but this claim conflicts with SJTV's statement to a captioning service that it could get a week ahead to obtain a lower rate for a later turnaround.[34] It appears that SJTV is using its own inflexibility to artificially drive up the cost of captioning. SJTV also failed to document that it ever bargained for a lower captioning rate. SJTV's petition fails to offer any evidence that it followed up with either of the captioning providers it contacted to bargain for a discounted rate. Furthermore, SJTV offers no evidence that it requested captioning

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[30] *Id.*, Profit & Loss statements for 2011 and 2012.
[31] *SJTV Supplement* at 1.
[32] *Id.*, Email from Katie Reilly to Matt Barbuto (Oct. 28, 2013) ("Reilly Email").
[33] *Id.* at 1.
[34] *Id.*, Reilly Email ("You mentioned that perhaps you could get a week ahead – even a few days would be great and would result in a lot less expense").

assistance from its programming distributor or that it sought captioning sponsorship of any kind.

Not only did SJTV fail to diligently seek out lower prices or funding to cover the costs of captioning, but its financial records indicate that it can to pay to caption its programming. SJTV is in relatively good economic health with an annual budget of about $120,000. Although SJTV may have had some financial difficulty in 2011, the organization reported that it was profitable in 2012 with a surplus of $4,977.[35] Thus, SJTV has failed to show the providing closed caption would be economically burdensome.

C. Peace is Possible fails to meet the standard for a waiver

As with previous petitioners, Peace is Possible has failed to adequately support its stated captioning costs. Peace is Possible states that the cost of captioning *Words of Peace* through an outside provider would be $89.32 per episode at $3.08 per minute, and states the cost of captioning software at $5,750.[36] However, one quote provided in the petition clearly states a captioning service rate of $1.48 per minute for an immediate turnaround.[37] Peace is Possible offers no explanation as to why it could not pursue this option. Furthermore, the quote for captioning software includes a desktop model priced at only $1,095.[38] Again, Peace is Possible offers no explanation for why it cannot

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[35] *Id.* SJTV dba CNY's Open House Profit & Loss statement for 2011, SJTV dba CNY's Open House Profit & Loss statement for 2012.
[36] *Peace is Possible Supplement* at 2.
[37] *Id.*, Ex. B.
[38] *Id.*, Ex. C.

pursue the cheaper option. Thus Peace is Possible fails to support its stated costs with adequate evidence and explanation as required by the Commission.

Peace is Possible also failed to bargain for lower captioning rates. While Peace is Possible submitted quotes from two captioning providers and for one captioning software provider, it failed to submit evidence in its petition documenting that it followed up with any of these parties to inquire about a lower rate.

Furthermore, Peace is Possible neglected to seek sponsorship from outside donors. The petitioner states that as a nonprofit, "it is not appropriate for us to seek income from commercial sponsors for this programming."[39] But there is no legal bar to such solicitation, and in the public broadcasting sphere,[40] and it is common for noncommercial stations to solicit corporate sponsorship. Thus, it seems that Peace is Possible's failure to seek sponsor indicates an institutional preference not to solicit donations for captioning. An organization should not be allowed to simultaneously decline to seek sponsorship and claim an economic burden warranting a captioning waiver.

Finally, although Consumer Groups recognize the difficulty of budgeting for a small nonprofit such as Peace is Possible, the petitioner has a budget of about $20,000 and should be able to pay for captioning. Peace is Possible's financial records show that it has not experienced any serious financial hardship, indicating that Petitioner is

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[39] *Id.* at 3.

[40] Peace is Possible's home state of Maryland merely requires that nonprofits register with the state before receiving charitable donations.MD Code, Business Regulation, § 6-401.

healthy. Consumer Groups therefore believe that the petitioner can afford its captioning costs and thus has not shown that the costs would be economically burdensome.

D. Outdoorsmen also fails to make the showing necessary for a waiver

Like previous Petitioners, Outdoorsmen falls short of the stringent requirements it must meet to receive a waiver for *Outdoorsmen Adventures*. Outdoorsmen fails to support its stated captioning costs with evidence or explanation. For instance, the petitioner states that its lower captioning option would be $11,700 per year.[41] However, the quote Outdoorsmen appears to be referring to offers closed-captioning services at a rate of $150 per 30-minute broadcast, or a total cost of $7,800 for 52 shows a year.[42] Outdoorsmen offers no explanation as to why this significantly lower rate is not an option.

Outdoorsmen also failed to bargain for lower captioning rates when it had a clear opportunity to do so. For instance, one captioning provider specifically states that it will "significantly discount" its services for regular clients.[43] Outdoorsmen offers no evidence that it followed up with this offer or that it bargained in any way for a lower rate. It is critical that Petitioners seek out and document several personalized, negotiated estimates to establish what it would actually cost to caption its programming.

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[41] *Outdoorsmen Supplement* at 1.
[42] *Id.*, Email from Steve York to Outdoorsmen (Oct. 7, 2013).
[43] *Id.*, Email from Rita Caswell to Outdoorsmen (Oct. 3, 2013).

While Outdoorsmen did request assistance from its programming distributor, the petitioner only documents one attempt to receive captioning sponsorship.[44] This minimal effort to obtain sponsorships does not eliminate Outdoorsmen's obligation to provide captioning for its programming.

Finally, although Consumer Groups recognize that Outdoorsmen has faced economic difficulties in the past, with an annual budget of over $68,000, Outdoorsmen should be able to afford to caption its programming at this time.[45] While Outdoorsmen documented a deficit for both 2011 and 2012, that shortfall appears to be shrinking rapidly.[46] Thus, as with other petitioners, Outdoorsmen should be able to budget for the cost of captioning just as it does every other cost of doing business. Outdoorsmen's petition should therefore be denied.

IV. Conclusion

River of Life, SJTV, Peace is Possible, and Outdoorsmen have not made the showing required by Rule 79.1(f) necessary to receive a waiver from the Commission's closed-captioning rules. Petitioners have had multiple opportunities to provide the evidence necessary to make such a showing, and have consistently failed to do so. This fact alone is grounds for dismissal. Furthermore, Petitioners' financial statements indicate that they can afford captioning at this time. Accordingly, we respectfully urge the Commission to dismiss the petitions and require the Petitioners to bring their

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[44] *Id.*, Letter from Jim Hamilton to Gary Howey (Oct. 4, 2013).
[45] *Id.*, Profit & Loss statement for 2011, Profit & Loss statement for 2012
[46] *Id.*, Profit & Loss statement for 2011, Profit & Loss statement for 2012 (showing a loss of $19,727 in 2011, but only a loss of $3,983 in 2012).

programming into compliance with the closed captioning rules. However, in the event that the Commission finds that one or more of the Petitioners made an adequate showing, any waiver should be a very limited time period to provide an incentive for the programmer to budget accordingly and bring its programming into compliance with Commission rules.

Respectfully submitted,

Angela J. Campbell

Aaron Mackey
Angela J. Campbell
Counsel to TDI

Lane Johnson
Georgetown Law Student

CERTIFICATION

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied on in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.

Claude L. Stout

Claude Stout
March 12, 2014

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 12, 2014, a copy of the Opposition to Four Petitions for Exemption from the Commission's Closed Captioning Rules, CG Docket No. 06-181was served by first class U.S. mail, postage prepaid, upon the petitioners at the addresses listed below.

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Outdoorsmen Productions
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Niko Perazich
March 12, 2014